



Filed: 4/19/2006

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LRB094 06877 RCE 58399 a

1 AMENDMENT TO SENATE BILL 304

2 AMENDMENT NO. _____. Amend Senate Bill 304 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Real Property Disclosure Act is
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database pilot program.

8 (a) As used in this Article:

9 "Borrower" means a person seeking a mortgage loan.

10 "Broker" means a "broker" or "loan broker", as defined in
11 subsection (p) of Section 1-4 of the Residential Mortgage
12 License Act of 1987.

13 "Closing agent" means an individual assigned by a title
14 insurance company or a broker or originator to ensure that the
15 execution of documents related to the closing of a real estate
16 sale or the refinancing of a real estate loan and the
17 disbursement of closing funds are in conformity with the
18 instructions of the entity financing the transaction.

19 "Department" means the Department of Financial and
20 Professional Regulation.

21 "Exempt person" means that term as it is defined in
22 subsections (d)(1) and (d)(1.5) of Section 1-4 of the
23 Residential Mortgage License Act of 1987.

24 "Lender" means that term as it is defined in subsection (g)

1 of Section 1-4 of the Residential Mortgage License Act.

2 "Licensee" means that term as it is defined in subsection
3 (e) of Section 1-4 of the Residential Mortgage License Act of
4 1987.

5 "Mortgage loan" means that term as it is defined in
6 subsection (f) of Section 1-4 of the Residential Mortgage
7 License Act of 1987.

8 "Originator" means a "loan originator" as defined in
9 subsection (hh) of Section 1-4 of the Residential Mortgage
10 License Act of 1987, except an exempt person.

11 "Pilot program area" means all areas within Cook County
12 designated as such by the Department due to the high rate of
13 foreclosure on residential home mortgages that is primarily the
14 result of predatory lending practices. The Department shall
15 designate the pilot program area within 30 days after the
16 effective date of this amendatory Act of the 94th General
17 Assembly.

18 "Title insurance company" means any domestic company
19 organized under the laws of this State for the purpose of
20 conducting the business of guaranteeing or insuring titles to
21 real estate and any title insurance company organized under the
22 laws of another State, the District of Columbia, or a foreign
23 government and authorized to transact the business of
24 guaranteeing or insuring titles to real estate in this State.

25 (a-5) Inception date. The Secretary of Financial and
26 Professional Regulation shall declare in writing the date of
27 inception of the pilot program. The inception date shall be no
28 later than September 1, 2006, and shall be at least 30 days
29 after the date the Secretary issues a declaration establishing
30 that date. The Secretary's declaration shall be posted on the
31 Department's website, and the Department shall communicate the
32 declaration to affected licensees of the Department. Until the
33 inception date, none of the duties, obligations,
34 contingencies, or consequences of or from the pilot program

1 shall be imposed. The pilot program shall apply to all mortgage
2 applications that are governed by this Article and that are
3 made or taken on or after the inception of the pilot program.

4 (b) A predatory lending database pilot program is
5 established within the pilot program area, effective upon the
6 inception date established by the Secretary of the Department.

7 The pilot program shall be in effect and operational ~~continue~~
8 for a total of 4 years ~~after its creation~~ and shall be
9 administered in accordance with Article 3 of this Act. The
10 database created under this program shall be maintained and
11 administered by the Department. The database shall be designed
12 to allow brokers, originators, credit counselors, title
13 insurance companies, and closing agents to submit information
14 to the database online. The database shall not be designed to
15 allow those entities to retrieve information from the database,
16 except as otherwise provided in this Article. Information
17 submitted by the broker or originator to the Department may be
18 used to populate the online form submitted by a credit
19 counselor, title insurance company, or closing agent.

20 (c) Within 10 days after taking a mortgage application, the
21 broker or originator for any mortgage on residential property
22 within the pilot program area must submit to the predatory
23 lending database all of the information required under Section
24 72 and any other information required by the Department by
25 rule. Within 7 days after receipt of the information, the
26 Department shall compare that information to credit counseling
27 standards developed by the Department by rule and issue to the
28 borrower and the broker or originator a determination of
29 whether credit counseling is recommended for the borrower. The
30 borrower may not waive credit counseling. If at any time after
31 submitting the information required under Section 72 the broker
32 or originator (i) changes the terms of the loan or (ii) issues
33 a new commitment to the borrower, then, within 5 days
34 thereafter, the broker or originator shall re-submit all of the

1 information required under Section 72 and, within 4 days after
2 receipt of the information re-submitted by the broker or
3 originator, the Department shall compare that information to
4 credit counseling standards developed by the Department by rule
5 and shall issue to the borrower and the broker or originator a
6 new determination of whether credit counseling is recommended
7 for the borrower based on the information re-submitted by the
8 broker or originator.

9 (d) If the Department recommends credit counseling for the
10 borrower under subsection (c), then the Department shall notify
11 the borrower of all HUD-certified counseling agencies located
12 within the State and direct the borrower to interview with a
13 counselor associated with one of those agencies. Within 10 days
14 after receipt of the notice of HUD-certified counseling
15 agencies, the borrower shall select one of those agencies and
16 shall engage in an interview with a counselor associated with
17 that agency. Within 7 days after interviewing the borrower, the
18 credit counselor must submit to the predatory lending database
19 all of the information required under Section 74 and any other
20 information required by the Department by rule. Any costs
21 associated with credit counseling provided under the pilot
22 program shall be paid by the broker or originator. A credit
23 counselor who in good faith provides counseling services shall
24 not be liable to a broker or originator for civil damages,
25 except for willful or wanton misconduct on the part of the
26 counselor in providing the counseling services.

27 (e) The broker or originator and the borrower may not take
28 any legally binding action concerning the loan transaction
29 until the later of the following:

30 (1) the Department issues a determination not to
31 recommend credit counseling for the borrower in accordance
32 with subsection (c); or

33 (2) the Department issues a determination that credit
34 counseling is recommended for the borrower and the credit

1 counselor submits all required information to the database
2 in accordance with subsection (d).

3 (f) Within 10 days after closing, the title insurance
4 company or closing agent must submit to the predatory lending
5 database all of the information required under Section 76 and
6 any other information required by the Department by rule.

7 (g) ~~The~~ ~~Upon recording the mortgage,~~ the title insurance
8 company or closing agent shall attach to the mortgage ~~must~~
9 ~~simultaneously file with the recorder~~ a certificate of ~~its~~
10 compliance with the requirements of this Article, as generated
11 by the database. If the title insurance company or closing
12 agent fails to attach ~~file~~ the certificate of compliance, then
13 the mortgage is not recordable. In addition, if any lis pendens
14 for a residential mortgage foreclosure is recorded on the
15 property within the pilot program area, a certificate of
16 service must be simultaneously recorded that affirms that a
17 copy of the lis pendens was filed with the Department. If the
18 certificate of service is not recorded, then the lis pendens
19 pertaining to the residential mortgage foreclosure in question
20 is not recordable and is of no force and effect.

21 (h) All information provided to the predatory lending
22 database under the program is confidential and is not subject
23 to disclosure under the Freedom of Information Act, except as
24 otherwise provided in this Article. Any borrower may authorize
25 in writing the release of database information. The Department
26 may use the information in the database without the consent of
27 the borrower: (i) for the purposes of administering and
28 enforcing the pilot program; (ii) to provide relevant
29 information to a credit counselor providing credit counseling
30 to a borrower under the pilot program; or (iii) to the
31 appropriate law enforcement agency or the applicable
32 administrative agency if the database information demonstrates
33 criminal, fraudulent, or otherwise illegal activity.

34 (i) Nothing in this Article is intended to prevent a

1 borrower from making his or her own decision as to whether to
2 proceed with a transaction.

3 (j) Any person who violates any provision of this Article
4 commits an unlawful practice within the meaning of the Consumer
5 Fraud and Deceptive Business Practices Act.

6 (k) Not later than one year after the Department designates
7 the pilot program area and annually thereafter during the
8 existence of the pilot program, the Department shall report to
9 the Governor and to the General Assembly concerning its
10 administration and the effectiveness of the pilot program.

11 (Source: P.A. 94-280, eff. 1-1-06.)".

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.".